

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SYLVESTER MILLER,)	
)	
Petitioner,)	
)	
v.)	Civ.Act.No. 08-178-GMS
)	
PERRY PHELPS , Warden)	
and JOSEPH R. BIDEN, III , Attorney)	
General for the State of Delaware)	
)	
Respondents.)	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Sylvester Miller, has applied for federal habeas relief, alleging error by the state courts. D.I. 1. By the terms of the Court's order, the answer is due to be filed on September 5, 2008.
2. Counsel has begun responding to the numerous allegations of error raised in Mr. Miller's comprehensive petition and accompanying memorandum of law. Unfortunately, more time is needed to complete respondents' answer. Counsel has recently assumed a new position within the Department of Justice; that transition has resulted in additional responsibilities and added considerably to counsel's workload. Additionally, counsel was in a felony trial on September 4, 2008. Moreover, counsel will be out of the office for two of the next three weeks for training purposes. As a result,

counsel requests that he be given an extension to include October 3, 2008, to file the respondents' answer to Mr. Miller's petition.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' second request for an extension of time in this case.

5. Respondents submit that an extension of time to and including October 3, 2008, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/Kevin M. Carroll
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 4836
Kevin.Carroll@state.de.us

DATE: September 5, 2008

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ Kevin M. Carroll
Deputy Attorney General

Counsel for Respondents

Date: September 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2008, I electronically filed the attached documents with the Clerk of Court using CM/ECF. I also hereby certify that on September 5, 2008, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

Sylvester Miller
No. 532861
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/Kevin M. Carroll
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
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Civ.Act.No. 08-178-GMS

PERRY PHELPS, Warden
and **JOSEPH R. BIDEN, III**, Attorney
General for the State of Delaware

Respondents.

ORDER

This ____ day of _____, 2008,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made
and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before October 3, 2008.

United States District Judge